IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5498 of 1987

For Approval and Signature:

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HUKUMAT RAI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 5498 of 1987

MS ROOPAL R PATEL for Petitioner No. 1

MR AK CLERK for Petitioner No. 1

MS VASUBEN P SHAH for Petitioner No. 1

MR PD BHATE, AGP for Respondent No. 1

NOTICE SERVED for Respondent No. 2

CORCORAM : HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 12/01/2004

ORAL JUDGEMENT

1. The petitioner has approached this Court under Article 226 of the Constitution of India praying for quashing of the charge-sheets which have been annexed to this petition at Annexure-E dated 9/8/1983 and at Annexure-H dated 22/1/1998.

2. The petitioner at the relevant time was in the employment of Gujarat Health Service as Medical Officer. He joined the service upon selection by Gujarat Public Service Commission and was appointed on 1/3/1966 as Class-II in the time scale of Rs.425-850. Subsequently on 18th May, 1971, on selection by Gujarat Public Service Commission the petitioner was appointed as District Family Planning Officer (Class-I) on probation for a period of two years. He took charge of the office at Surat as District Family Planning Medical Officer on 31st May, 1971 in compliance with the order of posting and transfer issued on 20th May, 1971. Since his work was found satisfactory, he was confirmed on the post upon expiry of probation period and he was continued as the District Family Planning Medical Officer on long term basis vide Government Notification of G.A.D. (Panchayat and Health Department) dated 18th April, 1974. It appears from the averments that have been made in the petition that the petitioner had rendered service to the Department with all sincerity and efficiency and for that his services were appreciated by awarding him silver shields as well as cash prizes as a best surgeon. It also appears that on account of his excellent performance on the post of District Family Planning Medical Officer from 31st May, 1971 to 15th October, 1975 remained matchless and because of his performance, two gold medals, one silver medal and five silver shields by the then Chief Minister of the State of Gujarat were awarded to the Surat District Panchayat. It also appears that despite his sincerity and efficiency there was inordinate delay of more than four years in fixation of his pay to the post of District Family Planning Medical Officer (Class-I) and having got totally frustrated, he tendered his resignation by letter dated 15th September, 1975 to respondent no. 1 with a request to accept the same. However, the resignation was not accepted by respondent no. 1 and he was also accordingly informed by respondent no. 1 vide letter dated 25th November, 1976. The reason ofcourse was given that there was some shortage in deposit of one month's notice period salary. The petitioner on 28th January, 1977 submitted a letter intimating withdrawal of his resignation, but despite that the authorities forwarded the resignation on 28th January, 1977 to the Government. The say of the

petitioner was that since the date of his resignation i.e. 15th September, 1975 till 25th November, 1976 his resignation was not accepted, he was deemed to be in service and therefore, he should be allowed to resume duties. It also appears that he was not permitted to resume and, therefore, he was constrained to approach this Court by filing Special Civil Application No. 1804 of 1978 for issuance of appropriate writ, order or direction on respondents to permit him to resume the duties. The said petition was allowed by this Court vide order dated 2nd December, 1981. No appeal was preferred against the said order. However, it appears that the petitioner was not allowed to join the service for considerable time and, therefore, on 14th April, 1982, he was required to file an application under the provisions of the Contempts of Courts Act. Shortly thereafter i.e. on 16th April, 1982 he was reinstated in service.

2.1. It is the subsequent events which are now in controversy before this Court in this petition. After the petitioner resumed the service on 16th April, 1982 he was served with charge-sheet dated 9th August, 1983 wherein four charges have been levelled against him. They are to the effect that - firstly, he had purchased the articles meant for giving publicity to the family planning worth Rs.6,500/= towards the end of the financial year 1972-73, which he could have avoided considering the financial constraints prevailing towards the end of the year and thereby he had committed irregularity. Secondly that he had not called for the competitive rates from the authorised dealers in the matter of purchase of aforesaid articles and bought them from only one agency i.e. A.D. Agency and thereby he had not exercised the due care which is required to be taken by the Purchase Officer. According to the Department, the petitioner had deliberately committed this negligence and not safeguarded the financial interest of the Panchayat. Thirdly that petitioner had called for the quotation of rates from two fictitious concerns, namely Shashi Advertisers and M/s. Jayant Plastics and without verifying their rates, the order of purchase was given to A.D. Agency, and lastly it was alleged that he had retained draft of Rs.6,500/= in his office from 12th April, 1973 to 5th May, 1976 and thereby he had committed temporary financial irregularity. Vide said charge-sheet he was also called upon to submit his statement of defence within 30 days of the date of receipt of the charge-sheet and he was also instructed to intimate the authorities whether he would intend to orally examine the witnesses, failing which it would be presumed that he had nothing to say in his defence.

2.2. The second charge-sheet was served on him which is dated 22nd January, 1998. This charge-sheet was in respect of the events that had taken place between 9th August, 1984 and 29th January, 1987. In the said charge-sheet it is alleged that Mr. G.P. Bhavsar was transferred from Store to Health Branch and vice him Mr. J.R. Patel was appointed, but Mr. Bhavsar had not formally entrusted the charge of that post to Mr. Patel. Despite Mr. Patel drawing the attention of the petitioner to that effect, the petitioner had not taken any steps in that direction till Mr. Patel was transferred elsewhere on 20th September, 1984. Petitioner had, therefore, shown indifferent attitude towards his duty and thereby he had committed breach of rule 3 (1) of he Gujarat Civil Service (Conduct) Rules, 1971. The second charge is to the effect that the petitioner had not verified the register of the stock of the stores which is required to be done periodically and thereby he had committed breach of rule 97 of Bombay Contingency Rules, 1959 and also by showing negligence in discharge of his duties, he had committed the breach of sub-rule (2) of rule 3 (1) of the Gujarat Civil Service (Conduct) Rules, 1971.

2.3. Lastly that though he was appointed as the Presenting Officer in an inquiry which was set up against one Mr. G.P. Bhavsar, Senior Clerk, he had deliberately remained indifferent to his duty which had caused unnecessary delay in completion of the said inquiry and thereby he had again committed breach of sub-rule (2) of rule 3 (1).

2.4. The statement of defence was not filed within stipulated time limit but it appears from the record of this petition and in particular the affidavit-in-reply filed by the State of Gujarat that since the petitioner had to refer to the record which was available only with the State Government to prepare his reply which consumed considerable time.

3. It is these charge-sheets which have been the subject matter of challenge in this petition.

4. Mr. A.K. Clerk, learned advocate for the petitioner has submitted that for the events that have taken place between the years 1971 and 1975, the charge-sheet has been submitted in the month of August 1984. Such inordinate delay on the part of the respondents in serving the charge-sheet has caused great prejudice to the petitioner in defending his interest.

He has further submitted that the respondents have failed to render any plausible explanation for the delayed submission of the charge-sheet. Apart from this, Mr. Clerk has also submitted that because of the negative attitude of the Department, the petitioner has been unnecessarily harassed and the manner in which he was transferred from one place to the other would amply justify his grievance.

4.1. As against that, Mr. Bhate, Ld. AGP has submitted that there was no delay in serving the charge-sheet as the petitioner had tendered his resignation with effect from 15th September, 1975 and thereafter he was reinstated in the service on 16th April, 1982. During this period of almost 7 years charge-sheet could not have been served because petitioner was not in the service. He has further drawn my attention to contents of para. 7 of the affidavit-in-reply wherein the respondents have tried to show that the petitioner has taken undue time to submit his written statement and that was solely with the purpose of prolonging the inquiry unnecessarily.

5. Having given careful consideration to the contents of the petition as well as the rival submissions and the record of the case, it clearly appears that the petitioner was discharging his duties till the year 1975 sincerely and efficiently and for which he was suitably rewarded. The difficulty has started after May 1975. The say of the petitioner is that he has to resign because despite his sincerity, the department had not fixed his pay in Class-I for almost 4 years. As already seen above, that even after submission of his resignation, the same was not accepted by respondent no. 1 till 25th November, 1976 and he was accordingly intimated also. The petitioner, therefore, expressed his willingness to withdraw the resignation and to resume the service. That was done on 18th January, 1977, but instead of permitting him to do so, the resignation was forwarded to the Government on 28th January, 1977. It was only after the petitioner obtained the orders from this Court for reinstatement, he was reinstated on 16th April, 1982 in the service. After his reinstatement that the aforesaid charge-sheets have been served. Considering the aforesaid facts, it is very clear that the alleged misconduct has taken place in the years 1971 to 1973. Even if the petitioner had resigned on 15th September, 1975, no charge-sheet was served to him for the misconduct which took place in the years 1971, 1972, 1973 and 1974. Atleast that could have been done at the earliest. It is also very clear that even subsequently

despite the petitioner's withdrawal of the resignation, it was the respondent which was adamant and not permitted him to resume service though till 25th November, 1976 they had not accepted the resignation. If the respondents had intended to proceed against him departmentally prior to this time, they could have certainly permitted him to resume the service and thereafter served him with the charge-sheet. It, therefore, appears that the idea of serving the charge-sheet has occurred to them only after the direction issued by this Court to reinstate him in service.

6. The second charge-sheet which has been served on the petitioner is dated 22nd January, 1998 and the same is in respect of the events that have taken place between 9th August, 1984 and 29th January, 1987. For this delay of almost 14 years the respondents have not offered any plausible explanation as could be seen from the affidavit-in-reply. It may be noted here that the second charge-sheet came to be served on him only when he was on the verge of retirement and he had retired attaining the age of superannuation on 31st January, 1998. One wonders why the respondents waited till almost last date of retirement of the petitioner for serving him charge-sheet. As already stated there is no plausible explanation coming forth.

7. This Court has time and again said that if the charge-sheet is required to be served on an employee, it should be done at the earliest and if there is inordinate delay, it is required to be quashed on the ground of delay itself. The learned Single Judge of this Court [Coram : R. Balia, J.] in the judgment rendered in the case of A.S. Sindhi v/s. State of Gujarat reported in 2000 (3) G.L.H. at page 563 restrained the respondents from proceeding further with the inquiry against the petitioner of that case on account of the delay caused in service of the charge-sheet.

7.1. Again the Division Bench of this Court in Letters Patent Appeal No. 765 of 2001 dated 25/9/2001 [Per Ravi R. Tripathi, J.] has quashed the charge-sheet on account of delay.

7.2. Obviously when such delay is caused, the delinquent is bound to face enormous difficulties in defending his interest because after a lapse of about 10 to 12 years, the records would not be available, his memory may fail and he may not be able to explain in what circumstances the act constituting the alleged misconduct

was committed, relevant witnesses may not be available and similar other difficulties. If the charges had been levelled against him in time, he could have as well explained them and the explanation might have been accepted by the Department. But with the passage of time that may not be now possible for the petitioner and he will feel totally handicapped to defend the charges. On account of delay or default that may have been caused by the respondents, the petitioner cannot be allowed to suffer.

7.3. Since I am inclined to accept this petition solely on the ground of delay, I do not propose to deal with the other contentions that have been raised by the petitioner in this petition.

8. In the result, this petition is allowed. The charge-sheets at Annexures - E and H are quashed. The respondents are restrained from proceeding further against the petitioner in connection with these charges. Rule made absolute with no order as to costs.

[AKSHAY H. MEHTA, J.]

* Pansala.